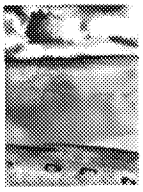

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November 4, 2015

Commissioner John Linc Stine (John.Stine@state.mn.us)
Minnesota Pollution Control Agency
520 Lafayette Road
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Catherine Neuschler (Catherine.Neuschler@state.mn.us)
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RE: **Northshore Mining Expansion**
MPCA 2014-01685-DWW Draft Clean Water Act Section 401 Certification

Dear Commissioner Stine, Ms. Neuschler:

The comments below are submitted on behalf of WaterLegacy, a non-profit organization formed to protect Minnesota's water resources and the communities that rely on them. We have approximately 10,000 members and supporters throughout the State of Minnesota.

By letter dated October 23, 2014 (attached as Exhibit 1), WaterLegacy objected to certification of the Northshore Mining (NSM) Expansion into high sulfur Type II Virginia Formation rock. We were concerned that the proposal provided no reasonable assurance that acid mine drainage, sulfates and metal leachates from the NSM expansion project would not violate applicable water quality standards for surface water and groundwater as a result of intentional discharge and polluted seepage. WaterLegacy emphasized the lack of mitigation measures, including collection and treatment of contaminated wastewater and pit water. Our comments also reflected concerns about the lack of necessary effluent limits in the NSM NPDES/SDS permit.

The draft Minnesota Pollution Control Agency (MPCA) Section 401(a)(1) certification letter proposes to certify the NSM expansion into high sulfur rock without addressing, let alone resolving, any of the concerns articulated in WaterLegacy's comments, incorporated by reference herein. The MPCA draft certification finds "reasonable assurance that activities proposed in the progression of the Peter Mitchell pit will not violate applicable water standards" as long as NSM complies with two conditions: "follow the requirements of the NPDES/SDS permit" and submit a Wetland Monitoring Plan.

NSM's proposed 108-acre expansion into Type II Virginia Formation rock would be the first time that NSM has been permitted to mine in high-sulfur Type II Virginia Formation. Coupled with NSM's recent in-pit destruction of the Laurentian divide to create a huge Peter Mitchell Pit straddling the Lake Superior and Rainy River Basins, NSM's expansion poses serious new risks.

The MPCA's draft certification letter is not a serious response to these risks. MPCA's primary condition is that "Management of the Type II Virginia Formation rock must follow the requirements of the NPDES/SDS permit." As MPCA certainly knows, the NSM permit is devoid of requirements to prevent sulfate, toxic metals and various other pollutants from violating Minnesota's numeric and narrative water quality standards.

The existing NSM NPDES/SDS permit has no applicable requirements other than to monitor some of the pertinent pollution levels.

Mercury
The NPDES/SDS permit MN0046981 issued by the MPCA to NSM in 2009 (attached as Exhibit 2) identifies mercury as a parameter of concern at surface discharge locations SD001, SD002, SD003, SD004, SD005, SD006, SD007, SD008, SD009, SD010, SD011, SD012, SD016, SD017 SD019. For these 15 sites, whether during the "interim" period or the "final" period, the NSM NPDES/SDS permit sets no limits. In every case the permit requirement is "Monitor Only."

Sulfate
The NSM NPDES/SDS permit identifies sulfate as a parameter of concern at surface discharge locations SD001, SD002, SD003, SD004, SD005, SD006, SD007, SD008, SD009, SD010, SD011, SD012. For these 12 sites, whether during the "interim" period or the "final" period, the NSM NPDES/SDS permit sets no limits. In every instance the permit requirement is "Monitor Only."

Copper, Nickel, Zinc & Cobalt
The existing NSM mine is currently not excavating taconite from high sulfur rock. It is likely that discharge of these toxic metals will increase if mining in Type II Virginia Formation rock is authorized. As Dunka Mine discharge monitoring summaries illustrate (see Exhibits 3A and 3B attached), even decades after taconite mining in high sulfur rock has ceased and despite the application of non-mechanical treatment, copper and nickel in Dunka Mine discharges frequently exceed water quality standards.

The existing NSM NPDES/SDS permit requirements for these metals provide no assurance that copper, nickel, zinc and cobalt would not exceed Minnesota water quality standards. Copper is identified as a parameter of concern at surface discharge locations SD001, SD002, SD003, SD004, SD005, SD016, SD017 and SD019. Nickel is identified as a parameter of concern at surface discharge locations SD001, SD002, SD003, SD004, and SD005 and zinc is identified as a parameter of concern at surface discharge locations SD016, SD017, and SD019. It is unlikely that these monitoring locations are sufficient to disclose impacts from NSM expansion discharge. In any case, for each of these metals and sites for all relevant times, the permit requirement is the same: it is "Monitor Only." The NSM permit doesn't require monitoring for cobalt.

Hardness, calcium and specific conductance
The existing NSM NPDES/SDS permit identifies no locations where monitoring for hardness, calcium or specific conductance pollutants is required. Based on the Dunka Mine discharge monitoring summaries (Exhibits 3A and 3B), where non-mechanical treatment is applied and lime used to control pH from high sulfur rock, levels of hardness are likely to violate

Minnesota's numeric water quality standards. In addition, calcium and specific conductance are likely to be elevated to the point that they violate narrative water quality standards, increasing the likelihood of invasive species in the case of calcium and impairing benthic invertebrates and aquatic life in the case of conductivity. The NSM NPDES/SDS provides no protection from any of these pollutants.

Groundwater Seepage

Similarly, the NSM NPDES/SDS permit contains no requirements to address groundwater seepage and potential violation of either groundwater or surface water standards. The word "groundwater" doesn't appear in the permit. There are no limits for any pollutant in groundwater. There are no groundwater sampling sites. Since surface discharge sites are outfalls and points of intentional release, it is clear that none have been sited to detect upwelling or "day lighting" from groundwater seepage. No surface water sampling is sited downstream to evaluate downstream effects of the NSM facility as a whole on water quality.

The NSM NPDES/SDS permit provides no assurance that the progression of the Peter Mitchell pit will not violate water quality standards.

It is clear that the existing NSM NPDES/SDS permit provides no assurance that the progression of the Peter Mitchell pit into high sulfur Type II Virginia Formation rock will not violate water quality standards. If permit requirements are "Monitor Only," a discharger may be "compliant" irrespective of the level of pollution discharged. As the MPCA acknowledged in response to questions asked by the *Timberjay* related to the Dunka Mine permit, a mining company is "compliant with the 'Monitor Only' portion of their permit simply by monitoring." (Exhibit 4 attached).

The existence of a "Monitor Only" NPDES/SDS permit does not set any pollution limits. To the contrary, such a permit may serve to shield a discharger from liability, since that discharger has complied with everything that the MPCA asked them to do.

In the case of the MPCA's NPDES/SDS permit issued to NSM, no reasonable argument could be made that the deficiencies of the existing NSM permit will be promptly and effectively addressed with an updated permit containing enforceable and rigorous effluent limitations based on Minnesota's numeric and narrative water quality standards. In fact, the U.S. Environmental Protection Agency (EPA) attempted to motivate the MPCA to update the NSM permit, among others, by negotiating a Joint Priority Agreement with MPCA in 2013 to eliminate the MPCA's backlog of out-of-date mining permits. (Exhibit 5A).

By the end of 2014, little progress had been made, and the MPCA asserted insufficient staffing and requested relief from joint priority targets and permit reissuance priorities. EPA objected to MPCA's retreat from joint priority objectives and specifically requested restoration of various permit reissuances to priority status, including the NSM Peter Mitchell permit MN0046981 (Exhibit 5B). Despite EPA's dissatisfaction, by summer 2015 no progress had been made to update MPCA NPDES permits, including the NSM Peter Mitchell permit. (Exhibit 5C).

On July 2, 2015, as a result of the MPCA's consistent failure to issue and enforce NPDES permits in compliance with the Clean Water Act, WaterLegacy filed a Petition for Withdrawal of Program Delegation from the State of Minnesota for NPDES Permits Related to Mining Facilities with EPA. An investigation is underway, and WaterLegacy's Petition and related documents have been uploaded by EPA to the following docket: http://ofmpub.epa.gov/apex/wps/f?p=122:5:29854429680004::NO::P5_PETITION_ID:241

Pending reissuance of an NSM NPDES/SDS permit with water quality based effluent limitations, numeric limits on groundwater pollution, whole effluent toxicity testing and appropriate monitoring for surface discharge, groundwater seepage and seepage impacts on surface water, MPCA should not be allowed to reference "the requirements" of the NPDES/SDS permit process to certify reasonable assurance of compliance with Minnesota water quality standards. The only effects "reasonably assured" by the NSM NPDES/SDS permit are increased levels of pollution as the NSM expansion affects more toxic rock and the potential that a permit shield from liability could allow NSM to contaminate Minnesota surface and groundwater without consequences.

The MPCA's proposed Wetland Monitoring Plan does not protect wetlands from impairment or destruction.

The Wetland Monitoring Plan proposed by the MPCA in its draft certification letter is insufficiently substantive. This Plan would simply add monitoring of wetlands to the MPCA's current ineffectual strategy of monitoring pollutants.

WaterLegacy is not opposed to monitoring. We believe that, once a regulatory standard is set, whether for effluents or for wetlands impacts, monitoring is a vital tool to enforce that regulatory constraint. What we oppose is the pretense that monitoring in the absence of regulation achieves protection of anything other than the job security of industry consultants.

It appears to WaterLegacy that the MPCA is concerned about changes in water quality and the biological condition of wetlands potentially affected by the NSM expansion. But, MPCA has yet to take the essential next step to specify regulatory requirements to protect wetlands and consequences for failure of protection.

Appropriate regulatory standards for protection of wetlands functions could include limits on the drawdown of wetland water levels, limits on the percent change in specific wetlands biological community indicators, limits on sulfate concentrations in seepage to and from a wetland, or a prohibition on increases in methylmercury in wetlands flow to streams. Violation of these or other specific regulatory limits could be detected through monitoring and then enforced with the potential of permit suspension or revocation if NSM failed to remedy the measured impacts.

However, absent a regulatory regime defining proscribed wetlands impacts, how they will be detected and what enforcement will result if they are not rectified, a Wetlands Monitoring Plan, like a "Monitor Only" permit is, at best, an illusion of protection.

Conclusion and proposed conditions

The MPCA draft Clean Water Act Section 401(a)(1) certification letter fails to provide any assurance, let alone reasonable assurance, that the NSM progression into high sulfur Type II Virginia Formation rock will not violate Minnesota surface and groundwater standards and impair wetlands. The State's failed NPDES program cannot be used to rationalize further and riskier mining expansions into high sulfur rock. Even with the best intentions, wetlands monitoring without regulatory limits on impacts applies the same ineffectual "feel good" approach to mining impacts to wetlands that Minnesota has, thus far, applied to discharge of mining pollutants.

Clean Water Act Section 401(a)(1) certification was intended to prevent federal agencies from approving projects that would adversely affect state jurisdictional waters and wetlands. This system presumes that States would have the courage and conviction to regulate pollution and protect their precious water resources.

WaterLegacy and the thousands of citizens across Minnesota for whom we speak respectfully request that the MPCA appropriately play its role in protecting Minnesota water quality. With respect to the NSM progression into high sulfur Type II Virginia Formation rock, WaterLegacy requests that the MPCA condition its Section 401(a)(1) certification on the completion and reissuance of a new NPDES/SDS permit including the following conditions:

- Water quality based effluent limits for mercury, sulfate, copper, nickel, zinc, cobalt, hardness, calcium, specific conductance and other potential surface water contaminants to ensure compliance with Minnesota numeric and narrative standards, including nondegradation, using experience with other taconite mining in high sulfur rock as well as careful review of NSM testing data to evaluate the potential for exceedances;

- Numeric limits on groundwater contaminants based on Minnesota Health Risk limits, developed in consultation with the Minnesota Department of Health;

- Biological surveys of benthic invertebrates in receiving water streams to at least the genus level, in accordance with MPCA methods, with requirements of periodic surveys to compare with initial results;

- Whole effluent toxicity testing on appropriate sensitive species, determined in consultation with EPA;

- Permit limits prohibiting toxicity to sensitive species and prohibiting decline in the richness of benthic invertebrate communities at the genera level;

- Monitoring locations to identify potential impacts from groundwater seepage, "day lighting" of groundwater seepage in surface waters, direct surface discharge, and surface water impacts in downstream receiving waters;

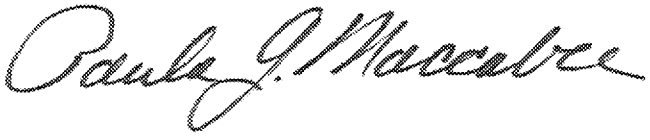
- Specific permit limits to prevent adverse impacts to wetlands functions, including but not limited to biological integrity and water quality, and to preclude methylmercury increases;

- Specific monitoring techniques and requirements to identify violations of regulatory limits designed to preserve wetlands and wetlands functions;

- Explicit enforcement consequences, including permit suspension and revocation, should violations of water quality or wetlands protection criteria persist.

WaterLegacy appreciates the opportunity to comment on the MPCA's draft Section 401(a)(1) certification of the NSM proposed progression into high sulfur Type II Virginia Formation rock. We would welcome the opportunity to discuss this matter further and to assist in putting regulatory structures in place so that Minnesota could, in fact, have reasonable assurance that mining projects and expansions would not impair wetlands and violate applicable water quality standards.

Sincerely yours,



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Attached Exhibits

Exhibit 1	WaterLegacy, Comment on Northshore Expansion Project Section 401 Certification, October 23, 2014.
Exhibit 2	Northshore Mining NPDES/SDS permit MN0046981.
Exhibit 3A	MPCA Summaries, Dunka Mine Discharge Monitoring Reports, March 19, 2015.
Exhibit 3B	WaterLegacy Additional Summaries, Dunka Mine Discharge Monitoring Reports, September 8, 2015.
Exhibit 4	MPCA Responses to *Timberjay* Questions (Set II), October 2015.
Exhibit 5A	EPA/MPCA Metallic Mining Joint Priority Performance Partnership Agreement, April 2013.
Exhibit 5B	MPCA Mining Permit Joint Priority Report for FY 2014 with EPA Comments, January 20, 2015.
Exhibit 5C	WaterLegacy Minnesota Metallic Mining Permit Status Spreadsheet, June 2015.